

1 TOMIO B. NARITA (SBN 156576)
2 tnarita@snllp.com
3 JEFFREY A. TOPOR (SBN 195545)
4 itopor@snllp.com
5 SIMMONDS & NARITA LLP
6 50 California Street, Suite 1500
7 San Francisco, CA 94111
8 Telephone: (415) 283-1000
9 Facsimile: (415) 352-2625

10 BRYAN O. BALOGH
11 *Admitted Pro Hac Vice*
12 bbalogh@burr.com
13 BURR & FORMAN LLP
14 420 20th Street North, Suite 3400
15 Birmingham, AL 35203-5210
16 Telephone: (205) 251-3000
17 Facsimile: (205) 458-5100

18 *Attorneys for American First Finance, LLC*

19 **UNITED STATES DISTRICT COURT**
20
NORTHERN DISTRICT OF CALIFORNIA

21 MARIA ANDRADE, *et al.*,) Case No. 3:18-cv-06743
22 Plaintiffs,)
23 v.) **DEFENDANT AMERICAN FIRST
24 AMERICAN FIRST FINANCE, INC., *et al.*,) FINANCE, INC.'S PROPOSED
25 Defendants.) VERDICT FORM AND STATEMENT
26) IN SUPPORT
27)
28) Pretrial Conference: March 10, 2023
29) Time: 1:30 P.M.
30) Location: Courtroom C, 15th Floor
31)
32) HONORABLE SALLIE KIM
33)
34) Complaint Filed: November 7, 2018
35)
36) Trial Date: April 11, 2023
37)
38)**

**DEFENDANT AMERICAN FIRST FINANCE, INC.'S
PROPOSED VERDICT FORM**

We answer the questions submitted to us as follows:

1. Is Plaintiff a consumer who purchased goods or services as part of a transaction?

_____ Yes _____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Is Elegant Furniture a person that provided goods and services to Plaintiff as part of a transaction?

_____ Yes _____ No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. Is American First Finance a person that provided goods and services to Plaintiff as part of a transaction?

_____ Yes _____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

Civil Code § 1770(a)(2)

4. Did Elegant Furniture misrepresent to Plaintiff in a transaction the source, sponsorship, approval, or certification of goods or services?

_____ Yes _____ No

Answer the next question.

Civil Code § 1770(a)(3)

5. Did Elegant Furniture misrepresent to Plaintiff in a transaction the affiliation, connection, or association with, or certification by, another to Plaintiff?

_____ Yes _____ No

Answer the next question.

Civil Code § 1770(a)(5)

6. Did Elegant Furniture represent to Plaintiff in a transaction that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that Elegant Furniture has a sponsorship, approval, status, affiliation, or connection that Elegant Furniture does not have?

_____ Yes _____ No

Answer the next question.

Civil Code § 1770(a)(14)

7. Did Elegant Furniture represent to Plaintiff that a transaction confers or involves rights, remedies, or obligations that it does not have or involve, or that are prohibited by law?

_____ Yes _____ No

If you answered question 4, 5, 6, or 7 is yes, then answer question 8. If you answered no to questions 4, 5, 6, and 7, stop here, answer no further questions, and have the presiding juror sign and date this form.

Civil Code § 1780

8. If you answered “Yes” to any of the questions above, did Plaintiff suffer any damage as a result of any Elegant Furniture’s conduct?

_____ Yes _____ No

If your answer to question 8 is yes, then answer question 9. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

Civil Code § 1782

9. Did Plaintiff notify Defendant, thirty days or more prior to commencing her lawsuit, send Defendant a notice in writing, by certified or registered mail, return receipt requested, to the place where the transaction occurred or to Defendant’s principal place of business within California, notifying Defendant of its alleged violations and demanding that they be corrected?

_____ Yes _____ No

If your answer to question 9 is yes, then answer question 10. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

10. What amount of damages, if any, will reasonably and fairly compensate Plaintiff for any injury you find was caused by Defendant?

\$_____.

Answer the following questions only if all your answers to the questions above were “no.”

11. Is Plaintiff a retail buyer who purchased goods under a retail installment contract?

_____ Yes _____ No

If your answer to question 11 is yes, then answer question 12. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

12. Is Elegant Furniture a person and retail seller in the business of selling goods or furnishing services to retail buyers?

_____ Yes _____ No

If your answer to question 12 is yes, then answer question 13. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

13. Is American First Finance a holder who acquired a retail installment contract entered into by a retail buyer?

_____ Yes _____ No

If your answer to question 13 is yes, then answer question 14. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

Civil Code § 1803.2(a): Single Document Rule

14. Did the retail installment contract at issue contain in a single document the entire agreement of Plaintiff and Defendant with respect to the cost and terms of payment for the good and services, including any promissory notes or any other evidences of indebtedness between the parties relating to the transaction?

_____ Yes _____ No

Answer the next question.

Civil Code § 1803.3: Terms of Sale

15. Did Elegant Furniture misrepresent the terms of sale on the retail installment contract?

_____ Yes _____ No

Answer the next question.

Civil Code § 1803.3(a): Description of Goods

16. Did Elegant Furniture fail to describe the goods or services sufficiently to identify them on the retail installment contract?

_____ Yes _____ No

Answer the next question.

Civil Code § 1803.7: Delivery of Contract

17. Did Elegant Furniture fail to deliver to Plaintiff a legible copy of the retail installment contract at the time she signed it?

_____ Yes _____ No

If your answer to question 14, 15, 16, or 17 was yes, answer the following question. If your answers to questions 14, 15, 16, and 17 were all no, stop here, answer no further questions, and have the presiding juror sign and date this form.

18. Did American First Finance acquire the retail installment contract with knowledge that (a) the contract did not contain in a single document the entire agreement of Plaintiff and Elegant Furniture with respect to the cost and terms of payment for the good and services; (b) Elegant Furniture misrepresented the terms of sale on the contract; (c) Elegant Furniture failed to describe the goods or services sufficiently to identify them on the contract; or (d) Elegant Furniture failed to deliver to Plaintiff a legible copy of the contract at the time she signed it?

_____ Yes _____ No

If your answer to question 18 was yes, then answer the following question. If your answer to question 18 was no, stop here, answer no further questions, and have the presiding juror sign and date this form.

19. Plaintiff is entitled to recover \$1,318.96 from Defendant, representing finances charges and late fees paid by her to Defendant under the contract.

_____ Agree _____ Disagree

Signed: _____

Dated: _____

After [this verdict form has/all verdict forms have] been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

Pursuant to Section V.G of the Court’s Case Management and Pretrial Order (ECF No. 161 at 6:23-27), Defendant American First Finance, Inc. submits that its proposed verdict form should be provided to the jury rather than Plaintiff Maria Andrade’s proposed form for the following reasons.

First, Plaintiff’s proposed form seeks findings on matters that are for the Court, not the jury, to decide, or a matter that must be bifurcated, *i.e.*, the amount of punitive damages. *See, e.g.*, Defendant’s Motions in Limine Nos. 3 & 4 (ECF Nos. 338, 339). Thus, questions 2(A) through 2(C) are improperly included on Plaintiff’s proposed form.

Second, Plaintiff’s proposed form improperly asks whether “AFF or its agent” made various misrepresentations or omissions. Plaintiff’s only reference to a theory of agency liability is a boilerplate allegation set forth in paragraph 29 of her Second Amended Complaint. Plaintiff alleges and has testified that her only interactions were with former Defendant Elegant Furniture. *See* ECF No. 162 at ¶¶ 40-41. There is no evidentiary support to ask whether AFF made a misrepresentation or omission. Thus, as phrased, question numbers 1(B) and 3 through 5¹ are improperly included on Plaintiff’s proposed form.

Third, Defendant’s proposed form will help the jury focus on the issues and reduce the length and complexity of the jury instructions. Defendant’s form clearly and explicitly state the law, tracking the elements of Plaintiff’s claims, thereby focusing the jury. Plaintiff’s form, meanwhile, omits certain required findings, such as findings on essential elements of Plaintiff’s CLRA and Unruh Act claims, or that Plaintiff was damaged; improperly merges her Unruh Act claims into a single question; and improperly directs the jury to award her a specified amount of damages rather than leaving that determination to the jury. Defendant’s form, in contrast, properly require the jury to return written findings of fact as to the material issues in the case, step by step, thereby avoiding confusion.

¹ Plaintiff’s proposed form includes two questions numbered “3.” Both are improperly phrased.

1 DATED: February 24, 2023.

2
3 SIMMONDS & NARITA LLP
4 TOMIO B. NARITA
5 JEFFREY A. TOPOR

6 By: *s/ Jeffrey A. Topor*
7 Jeffrey A. Topor
8 Attorneys for American First Finance, LLC

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28